IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1239/2002.

Judgment Reserved on: 15.5.2007.

Date of Decision : 22.5.2007

J.P.Vashishtha. …Petitioner.

Versus:

Sainik School Society and another. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Shrawan Dogra, Advocate.

For Respondents. Mr.Sandeep Sharma, Assistant Solicitor General.

Sanjay Karol, J .

The petitioner has filed the present writ petition asking for the following relief(s):

(i). That decision of the respondent No.1 as conveyed vide letter dated 24.8.2001 (Annexure P-9) refusing second option to the petitioner and other similarly situate persons may be quashed and set aside.

(ii) That the respondents may be directed to permit the petitioner and other similarly situate persons to give fresh options to opt for the pension Scheme keeping in view the amendment

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

made in the scheme by the respondent No.1 Board in the year 1991 and the petitioner and other similarly situate persons be held entitled to the consequential benefits under the Pension Scheme.

(iii) That in case during the pendency of the writ petition the petitioner or other similarly situate person retire, such person(s) may also be held entitled to the benefits flowing from the decision of the present writ petition.

(iv) Any other relief deemed fit and proper in the circumstances of the case may also be granted.

(v) Costs of the petition may also be awarded."

Respondent No.1 is a registered Society. It has opened Sainik Schools in different States through out the country. In Himachal Pradesh the school is known as Sainik School, Sujanpur Tihra, District Hamirpur, H.P. since 1978. Whenever a decision is taken by the Board of Governors of respondent No.1-Society, as a practice the gist of the decision is conveyed to the employees of the School by issuing "School Routine Orders" (SRO). Initially, the employees of the Sanik School were entitled to Contributory Provident Fund under the CPF Scheme. However, w.e.f. 1.4.1988, the Governing Body of respondent No.1 decided to apply the Pension Scheme as applicable to the employees of the Central Government, with certain exceptions to the employees of all the Sainik Schools

and options for the said scheme were called from the existing employees. The said decision was circulated as SRO dated 3rd March, 1989 by respondent No.2-School to its employees. As per the SRO, the employees were made entitled to pension, without commutation w.e.f. 1st April, 1988. However, they had to exercise an option of either continuing with the existing CPF Scheme or switching over to the Pension Scheme along with GPF. Family pension and right to get the pension commuted was not made applicable to the employees of the Sainik Schools.

In the absence of most advantageous features of the Pension Scheme, petitioner did not opt for the same before the cut of date of 10.3.1989.

Respondent No.2 issued another SRO dated 10th January, 1992 giving fresh opportunity to the employees for exercising option to switch over to the Pension Scheme latest by 31st January, 1992. This SRO, however, did not reflect the change which had been incorporated in the Pension Scheme as circulated earlier vide letter dated 3rd March, 1989. Without even knowing the change which had been brought in petitioner did not opt for switching over from CPF to GPF.

It was only after the cut off date that the petitioner learnt that the entire benefits of family pension and commutation of pension was extended to the Sainik School employees also.

He made a representation stating that the petitioner and other similarly situated persons never knew

about the amendment and they be allowed to join the Pension Scheme. He pursued the matter from time to time and vide letter dated 7th December, 2000, respondent No.2 directed the petitioner to make individual representation which was duly submitted on 5th January, 2001.Vide letter dated 12th February, 2001 he was also informed that his case was under consideration and asked to furnish additional information which was promptly done .

Vide letter dated 5th March, 2002 respondent No.2 also informed respondent No.1 that there is no mention about the amendment in the Pension Scheme and the aggrieved employees did not give fresh option believing that there is no change in the earlier Scheme. Portion of the said letter is reproduced as under:

> "Even though the School had published the SRO it, however, did not unambiguously state the revised salient features of the EPF scheme incorporating benefits of family pension and commutation of pension. Since these points of the revised scheme had not been highlighted in the SRO stating clearly that previous anomalies have been removed. The employees thought that there was nothing new in the scheme, therefore, paid no attention to the SRO then."

The claim/representation of the petitioner was not considered favourably as was conveyed to him vide SRO dated 24th August, 2001.It is admitted case of the parties that

the petitioner continued to be governed by the original CPF Scheme and has been regularly paying his contribution along with the employees contribution. It is also an admitted case that out of the employees of respondent No.2 only 16 persons including the petitioner herein have been left out and all others have opted for the New Pension Scheme.

A perusal of the SRO dated 3rd March, 1989, makes it is clear that the Pension Scheme was not made applicable in entirety. Admittedly, the amendment conveyed in terms of letter dated 9th December, 1991 making the benefit of family pension and commutation of pension extendable to Sainik School employees was not made public and brought to the notice of the petitioner. The SRO dated 10th January, 1992 giving fresh opportunity for exercising option for switching over from CPF to Pension Scheme does not even reflect that the Pension Scheme had been amended to make it more advantageous to the employees. The respondent(s) has admitted that there is a bonafide error in not bringing to the notice of the employees the amendment carried out in the Scheme which was advantageous to the employees. Obviously, in the absence of the same, the petitioner was not even expected to take a decision. Admittedly, the matter has been under consideration by the respondents-authorities. The decision of the Board of Governors of respondent No.1, in my view, has not been taken in the correct perspective keeping in view the factual background. It was wrongly held that the employees

themselves opted to be governed under the CPF Scheme.

On 20th April, 2007, this Court had directed the respondents to make an endeavour to amicably resolve the dispute. It has not been done on the ground of administrative inconvenience.

In this background, I am of the considered view that the interest of justice would be served if the respondents are directed to consider the case of the petitioner afresh. The petitioner shall make a representation immediately. The respondents shall decide the issue afresh within a period of eight weeks from today by passing a speaking order and after affording adequate opportunity to the petitioner.

The writ petition is accordingly disposed of with the aforesaid directions.

(Sanjay Karol),
Judge.

May 22, 2007.(R)